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Juridical Acculturation in Black Africa and its Effects on the Administration of Criminal Justice

Integrating the cultural values of native law with western-style legal systems is a common problem in developing nations. This article explores specific differences in the role of law in society by contrasting and comparing Nigeria and France.

"The rain only wets the spots of the leopard; it can never remove them."--Ashanti proverb

By Yves Brillon

Introduction

To understand crime and society's reaction to crime in modern Black Africa,* one must go beyond the official statistics furnished by Black African governments. In African countries, modern systems of criminal justice and penal codes which are almost identical to those of the West have now been introduced. However, traditional tribal laws continue to thrive in spite of all efforts to suppress them. Official African institutions for prevention, repression, and treatment are not rooted in traditional culture and beliefs, and are not trusted by the majority of the population. Thus, a valid sociological study of African legal systems cannot given full credence to statistics furnished by these institutions.

Under these circumstances, an ethnic approach to criminology (ethnocriminology) in which the cultural peculiarities of the research subject are carefully considered seems most appropriate. Above all, we must ask what the population itself considers a criminal offense and what correctional measures are available outside the official judicial process.

Ethnological and anthropological research has shown the existence of a traditional African criminal justice system with its own norms, correctional measures, judicial institutions, procedures, and verdicts. This already existing legal system was almost completely ignored in the penal codes established by the colonial powers and taken over later by the independent nations.

Whatever our opinion of tribal laws and their future, we must acknowledge that they continue to exist and that, in so doing, they have an impact on the official system of justice. The first question to be asked is, "What is the importance of surviving tribal laws?" Second, "Why does tribal law continue to exist?" Finally, "What factors explain the coexistence of two independent judicial systems in Black Africa?"

"L'acculturation juridique en Afrique noire et ses incidences sur l'administration de la justice criminelle" (NCJ 51432) originally appeared in International Annals of Criminology, v. 16, n. 1 and 2:193-232, 1977. (L'Imprimerie Administrative de Melun, Société Internationale de Criminologie, 4 rue Mondovi, 75001 Paris, France) Translated from the French by Sybille Jobin.

*Editor's Note: This summary provides illustrative material from only two countries, The Ivory Coast and Nigeria; the original article includes Dahomey, Cameroon, Niger, Madagascar, Tanzania, Sudan, Upper Volta, Senegal, Zaire, and Mali, with references to English-speaking East Africa and French-speaking West Africa.

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International Summaries

The Importance of Surviving Tribal Justice

It is difficult to evaluate the importance of African tribal justice in modern times. Since this system of justice is no longer legally binding (and frequently even forbidden), it has been forced to subsist clandestinely. Its continued use becomes apparent only when a case, because of its seriousness or a chance discovery, comes to the attention of the official courts. Indications are that traditional forms of justice are flourishing.

An example cited in a study of the Ivory Coast[1] demonstrates how tribal mechanisms attempt to settle conflicts. This case involves an accusation of a poisoning in a village in the Divo region, about 200 kilometers from Abidjan in the Ivory Coast. At 3 a.m. on March 4, 1972, N.T., a Gouro, who was not known to be suffering from an illness, died after vomiting blood. According to Gouro custom, the wife of the deceased was questioned as to the cause of her husband's death. She stated that he had been poisoned by his Baoulé enemies with whom he had been drinking the night before. The body was buried and the family of the deceased compiled a list of claims to recover their damages in a conciliatory fashion.

The accused Baoulé parties, claiming their innocence, refused to pay the wergeld (compensation for taking a life), and, in fear of Gouro reprisals, deferred the case to the official courts. The appearance of this case before the official courts represents only the tip of the iceberg of cases otherwise decided through tribal justice, the full extent of which can hardly be estimated.

In the large Nigerian city of Ibadan[2], a list of minor offenses (assault without major physical injury, gambling, and small theft) was submitted to a sample population of 120 citizens. The citizens were then asked whether they would prefer the customary neighborhood settlement or the official process involving police and courts for each of the offense types. Almost all those interviewed (82.5 percent of the upper class, 92.5 percent of the lower class), regardless of sex or age, favored tribal settlement, provided the crime was not too severe.

Another study of the importance of traditional settlements was conducted in 1974 in Abidjan, a modern city made up of many different ethnic groups. The statement submitted to a sample population read, "It is better to come to a friendly settlement, even if it is not entirely satisfactory, than to go to the police." A similar statement, "A bad out-of-court settlement is better than a good court case," was submitted to a representative sample population in France in 1969. A comparison between the responses of the African and French sample populations produced striking results. The Africans' preference for an amicable settlement (61.9 percent) was only 4.2 percent above the French one. The results demonstrated that, as far as minor offenses are concerned, the citizens of most countries would prefer an out-of-court settlement.

There may also be a sociocultural explanation for the lack of differentiation between French and African attitudes. Westerners prefer a "bad settlement" because the "good court case" will be drawn out and clumsy and will result, at best, in the offender's imprisonment or payment of a fine. Africans reason differently. They, too, are keenly aware of the inconvenience of a court battle; but to them justice means above all the restoration of tribal harmony and the reestablishment of the society as it was before the offense, with all parties involved reinvested with their original rights and obligations. Possibly the phrasing of the survey question confused the Africans because they simply could not conceive of a settlement that would not be entirely satisfactory to all parties.

There are several reasons why we can expect an even stronger preference for the traditional settlement in rural areas. First, the omnipresence of police and court authorities in the city makes the likelihood of discovering acts of clandestine tribal justice far greater than in jungle villages. Undoubtedly, serious crimes like murders, abductions, and injuries are harder to conceal in the city. Second, tribal justice can function only within the intimate framework of a homogeneous population. The multiplicity of ethnic groups in modern cities makes it hard to decide which tribe's customs should apply; in those cases, conventional jurisdiction frequently serves as a superior, impartial mechanism for the arbitration of grievances. Finally, the anti-traditionalist intellectual elite is highly influential in the city in its urging of fellow citizens to "become civilized" and to respect modern government institutions.

Types of Offenses Settled by Traditional Justice

An exemplary study in Abidjan indicated that 69.2 percent of the sample population cited "minor offenses" as best suited for a conciliatory settlement. Another 11.1 percent of the sample believed that even capital offenses like murder should be concealed from the official penal authorities.

In order to determine exactly for which offenses traditional justice is considered proper, we submitted a list of 22 offenses to a sample population (1,000 interviewees of Abidjan) asking, for each offense, whether they would (a) involve the police and court authorities or (b) arrange for an informal settlement between the victim and the offender. According to the statistical data, the offenses fell into three groups: (1) offenses which were preferably settled by traditional means, (2) offenses which evoked divided reactions, and (3) offenses which were usually referred to the police.

[1] This study, by Essat Fattah of the Department of Criminology of Simon Fraser University, Canada, has not yet been published.

[2] F. Oloruntimehin: "The Difference Between Real and Apparent Criminality." Second West African Conference of Comparative Criminology. Lagos, Faculty of Law, 1973.

(1) Cases referred to traditional settlement:

- A married man fathers the child of an unmarried girl—81.7 percent,
- A neighbor's cattle destroy a farmer's crops—74.1 percent,
- A husband kills his wife's lover by witchcraft—62.6 percent.

(2) Cases referred by some to the police and by others to tribal law:

- A man rapes a young women of his tribe—55.6 percent for traditional justice,
- The cattle of a nomad tribe destroy a village crop—51.2 percent for traditional justice,
- A stranger forces a young woman to have sexual relations with him—54.2 percent for police.

(3) Cases usually reported to the police:

- A stranger loses control of his car and kills a villager—94.4 percent,
- A husband poisons his wife's lover—81.9 percent,
- A salesman sells poor-quality merchandise—68.3 percent.

The results of the project were compared to a recent study (De Boeck[3]) in which the natives rated the same 22 offenses according to the seriousness they attributed to them. Our study shows that offenses that had been rated as most serious in De Boeck's study were not necessarily referred to the police. The results indicate that "social solidarity" (whether the offender belonged to the same tribal community) appeared to be foremost in deciding for or against police involvement. Thus, 74.1 percent would accept an informal settlement if a neighbor destroyed their crops as compared to only 51.2 percent in the case of strangers. Similarly, 28.7 percent favored amicable settlement if a driver killed his cousin in a car accident as compared to only 5.6 percent if the driver were an outsider. Another important factor in the decision for or against the official justice system seems to be the visibility of the offense. Natives tended to involve the police if the chances of covering up the case were slim. Thus poison murders were usually handed over to the police while witchcraft murders, which are far more difficult to detect, were dealt with under tribal law.

Reasons for the Survival of Tribal Law

To test the above suppositions, we asked the same sample population what made them rely so heavily on tribal justice rather than the official system. The replies fell into three categories.

Pettiness of the offense. Many natives (30.1 percent) argued that tribal law was particularly suited to the settlement of minor offenses. However, the concept of so-called "minor offenses" must be seen as a relative one depending on the norms of the particular ethnic group. The minor offenses which our sample population assigned to tribal law included infanticide, rape, abortion, and the poisoning of a sorcerer.

What do Africans mean when they term an offense "serious"? Are they referring to their own system of values or to the official penal code of the country? It is quite conceivable that the coexistence of two legal systems has confused the African value system and that African natives now deem cases to be serious if they are too visible to remain unnoticed by police or other officials and consequently cannot be dealt with on the tribal level. Faced with two conflicting judicial systems, they choose the appropriate system with care and try to keep on the good side of both systems.

Inefficiency of modern justice. Open criticism of the official court system was rare. Very few natives mentioned fear of police brutality or court corruption as a reason for avoiding official justice. Since our sample population lived in the city of Abidjan, inaccessibility of the government courts was also only a minor factor. The most frequently named shortcomings (7.7 percent of the interviewees) were the high cost and slowness of the official process.

Family allegiance. Nearly half the sample population (49.1 percent) named solidarity with family and tribe as their reason for adhering to the customary mode of settlement. In spite of the offense, they wanted to preserve good tribal relations and avoid vengeance or dishonor to those involved. This form of allegiance, which originally guaranteed the conciliation of tribal members in a closed ethnic environment, is all the more remarkable since almost two-thirds of the interviewees had been living in the city for over 5 years.

Reasons for the Coexistence of Two Judicial Systems

If two parallel justice systems exist at this time, it is because there is an ontological difference between them. The archaic system is based on old myths, an ancestral view of the universe, and the rules of an earlier generation. The modern system is oriented toward the future. One writer states, "The main difference is a spiritual one. Developed from two different modes of thought, the spirit of tradition and that of modern law are irreconcilable. As long as the former lives on, as long as the process of acculturation is not complete, we cannot put an end to the heterogeneousness of the judicial system."[4] An ethnocriminological study must analyze the reasons for this co-existence in detail. They can be found on four levels.

[3] A. De Boeck: Contribution a l'étude du système moral de la jeunesse zaïroise. (Louvain-Paris: Vander-Nauwelarts, 1975).

[4] M. Alliot: "L'acculturation juridique." Ethnologie Générale. Paris, Gallimard, Encyclopedie de la Pleiade, 1968, p. 1191.

Institutional factors. The criminal justice system, like any official institution, should closely reflect the norms and values of the society it represents. In Black Africa, however, the colonial powers introduced a social control system utterly unrelated to the cultural reality of the native society, its modes, thought, and ethnic personality. Because the modern justice system, which was imposed on a primitive society in the name of civilization and progress, has not taken native values into account, the natives consider it an "imported system of white justice" which does not really belong or apply to them.

Ideological factors. As long as the primitive mentality exists, ideological factors remain a major obstacle to a unified legal system. To begin with, European law emphasizes the protection of individuals and their rights, whereas the tribal concept of justice aims at the good of the entire community. In addition, Western legislation, with its rational, Cartesian base, neglects the magical and religious foundations basic to traditional native thought. The decriminalization of violations of tribal custom (breach of taboos, witchcraft) and the criminalization of acts accepted by the tribal community have created confusion among the natives, who do not understand the sudden change in codes of permissive behavior. The more the new laws exceed the understanding of the community, the less we can expect the natives to report aberrant behavior to the authorities.

For example, many Africans do not believe that justice has been done unless the victim is compensated for damages suffered. The strict Western penalties imposed on offenders without compensation for the victim seem incomprehensible to natives. In addition, native Africans believe that the initial offense often does not merit the ensuing process of stigmatization, which poses a real threat to tribal solidarity in that the stigmatized offender cannot resume normal life in the community after the settlement. As a result, reporting a crime to the authorities often seems incompatible with custom involving family ties with tribal allegiances.

Organizational factors. In many Black African countries, the traditional tribal judges were replaced by foreign officials with a formal and complex court ritual. As the courts became increasingly inaccessible, the population tended to avoid them. In describing the inaccessibility of the courts, the native Africans mentioned the slowness of the procedures, fear and shame of exposing themselves to an intimidating court ritual, refusal to expose tribal members to an "imported judicial system," doubts about receiving compensation, and lack of financial means.

Geographic factors. The more distant a community is from the official organs of justice, the more it will rely on its own methods of settlement. This is especially true in Africa, where 15 to 30 miles of jungle can obscure the official court system entirely from the natives' field of vision. The journey to the city courts is long and costly; it is undertaken only in exceptional cases. Thus, physical remoteness adds to the cultural distance of the official institutions.

Conclusion

Research conducted at Ibadan and Abidjan shows that tribal justice—even today and even for major offenses—appeals to the majority of the native African population. Some experts argue that traditional forms of settlement are on the increase.

Obviously, the new codes and administrative agencies are better suited to city dwellers than to the rural majority of the population. Nevertheless, even in the cities, where the agglomeration of different ethnic groups necessitates the existence of a common law, the insufficiencies of the official criminal justice system contribute to the growth of primitive justice. Cases of tribal justice and lynchings are reportedly on the rise. This leads us to believe that modern justice is not only ill suited to the traditional modes of thought but also incapable of dealing with the new criminality of the cities. To be sure, this is not a specifically African phenomenon since even the most advanced industrial societies have similar problems. The difference is that African tribes are inclined to return to the proven methods of taking justice into their own hands.

The breach between the authorities and the native Africans continues to grow. Perhaps in the future, criminal justice will return to ancient African norms in the course of a growing movement of counter-acculturation. Recent Pan-African politics show a growing desire to return to old values, to wipe out the humiliations of colonial times, and to forge a distinctly African personality.

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